

## **SYNOPSIS**

**SEVERANCE TAX -- LUMBER BYPRODUCT PROCESSING, PER SE, NOT SUBJECT TO SEVERANCE TAX** -- Pursuant to 110 C.S.R. 13A, § 2.12 and § 2.12.4, any cuts made to a tree after the same is severed, topped, and delimbed does not subject the wood processor to severance tax, in the absence of actual production activities by the processor.

## **FINAL DECISION**

The Director of the Field Auditing Division of the State Tax Commissioner's Office issued a severance tax assessment against the Petitioner.

This assessment was for the period of January 1, 1999 through December 31, 2001, for tax and interest, through October 31, 2002. Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed a petition for reassessment.

## **FINDINGS OF FACT**

1. During the assessment period the Petitioner operated a timbering business known as Company A and a lumber manufacturing business known as Company B, or Petitioner. Company A reports its timbering income for severance tax purposes.

2. At the hearing the Petitioner testified that he, as an individual, owns fifty (50) percent of Company A, Ms. B owns ten (10) percent and Mr. C owns the remaining forty (40) percent. Further, as an individual, the Petitioner manages Company B.

3. Although the entities are operated as separate concerns, Company A delivers all of its timber to Company B to be milled and in turn Company B charges

Company A a one hundred dollar fee for each one-thousand board feet of timber processed. Testimony also revealed that although Company A has been in arrears to Company B for the aforementioned milling charge, Company B continues to do the milling anyway. Petitioner also testified that when Company A makes a bid on standing timber the value to be derived from the sawdust, woodchips, etc., is never considered.

4. After the milling of the timber is completed, the Petitioner, after delivery of the finished products, sells, on its own, what it considers to be the waste products, such as sawdust, bark and wood chips to customers in order to recoup its costs. It is this income, which the Division seeks to tax to the Petitioner for severance tax purposes.

5. Petitioner's counsel introduced into the record a 1997 small claim decision wherein the Division did not contest that this same income was not attributable to Company A.

## **DISCUSSION**

The sole issue is whether the Petitioner, as a wood processor, is subject to severance tax.

The Division's counsel argues that Company A and Company B are related parties for purposes of the severance tax under 110 C.S.R. 13A, § 2.14, thereby requiring Petitioner to report twenty-five (25) percent of the gross proceeds of sale pursuant to 110 C.S.R. 13A, § 4.4.2.3. That argument may be valid with respect to Company A, the producer, but not with respect to this Petitioner, who clearly is not a producer.

Petitioner's counsel has countered, arguing that the sawdust, woodchips, and the like are merely waste byproducts of the lumber manufacturing and that because Petitioner did not sever or otherwise own the original tree, it has no economic interest in same and cannot, therefore, lawfully be subject to severance tax.

The truth is that 110 C.S.R. 13A, 2.12 and 2.12.4 and Burruss v. Hardesty, 171 W. Va. 61, 297 S.E.2d 836 (1982), make crystal clear that any cuts made to a tree after the same is severed, topped and delimbed, does not subject the wood processor to severance tax. Therefore, Petitioner is not subject to severance tax at all with respect to its sale of sawdust, wood chips, etc.

### **CONCLUSIONS OF LAW**

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).

2. In light of the substantive law discussed above, the Petitioner-taxpayer in this matter has carried the burden of proof.

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the severance tax assessment issued against the Petitioner for the period of January 1, 1999, through December 31, 2001, should be and is hereby **VACATED**, and the Petitioner owes no further severance tax liability for the period in question.